

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                           |  |                                    |  |
|--|--|---------------------------|--|------------------------------------|--|
| Investigator:<br>Sara Griffin                      | Team:<br>Squad #5  | CCRB Case #:<br>201703942 | <input checked="" type="checkbox"/> Force              | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|  |  |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Wednesday, 05/10/2017 11:48 PM | Location of Incident:<br>Northeast corner of Long Island Expressway and Clearview Expressway | Precinct:<br>111          | 18 Mo. SOL<br>11/10/2018                               | EO SOL<br>11/10/2018               |  |
| Date/Time CV Reported<br>Thu, 05/11/2017 7:40 AM   | CV Reported At:<br>IAB   | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 05/17/2017 12:45 PM |                                    |  |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)       | Shield | TaxID  | Command |
|--------------------------|--------|--------|---------|
| 1. POM Bobby Glover      | 14082  | 934934 | HWY DST |
| 2. POM Joseph Napolitano | 21595  | 952044 | HWY 03  |

| Witness Officer(s)    | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Ryan Eskridge  | 00652     | 948937 | HWY 03   |
| 2. POM Jordan Bistany | 22702     | 929734 | HWY 03   |
| 3. POM Gary Minutolo  | 08407     | 944814 | HWY 03   |
| 4. LT Eison Shum      | 00000     | 929166 | HWY 03   |

| Officer(s)              | Allegation  | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| A.POM Bobby Glover      | Abuse: Police Officer Bobby Glover threatened § 87(2)(b) with the use of force. |                             |
| B.POM Bobby Glover      | Force: Police Officer Bobby Glover used pepper spray against § 87(2)(b)         |                             |
| C.POM Joseph Napolitano | Force: Police Officer Joseph Napolitano used physical force against § 87(2)(b)  |                             |
| D.POM Joseph Napolitano | Force: Police Officer Joseph Napolitano struck § 87(2)(b) with a flashlight.    |                             |
| E.POM Bobby Glover      | Abuse: Police Officer Bobby Glover arrested § 87(2)(b)                          |                             |

## Case Summary

On May 11, 2017, Lieutenant Eison Shum of Highway District Three called the IAB Command Center and reported that force had been used against § 87(2)(b). On May 17, 2017, IAB referred the complaint to the CCRB via Log # 17-18122.

On May 10, 2017, at 11:48 PM, § 87(2)(b) was pulled over on the Clearview Expressway in Queens by Police Officer Bobby Glover of the Highway District. PO Glover requested additional units and Police Officer Joseph Napolitano of Highway District Three arrived at the scene. PO Glover issued two summonses to § 87(2)(b) one for speeding and one for disobeying a lawful order. While attempting to remove § 87(2)(b) from his vehicle, PO Glover removed his can of pepper spray and held it in § 87(2)(b)'s face before allegedly asking, "Do you want to ride the lightning?" (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Glover then discharged his pepper spray towards § 87(2)(b) (**Allegation B: Force**, § 87(2)(g)). PO Napolitano allegedly punched § 87(2)(b)'s left eye (**Allegation C: Force**, § 87(2)(g)). As § 87(2)(b) was removed from his vehicle, PO Napolitano allegedly swung his flashlight two times towards § 87(2)(b) (**Allegation D: Force**, § 87(2)(g)) striking § 87(2)(b) once in the back of the head. § 87(2)(b) was arrested by PO Glover for disorderly conduct: obscene language/gestures and resisting arrest (**Allegation E: Abuse of Authority**, § 87(2)(g)). There is dashboard camera footage of the incident (Board Review 1).

## Findings and Recommendations

### **Allegation A –Abuse of Authority: Police Officer Bobby Glover threatened § 87(2)(b) with the use of force.**

It is undisputed that § 87(2)(b) was pulled over by PO Glover for speeding and was initially not compliant when asked to provide his license. PO Glover requested that additional officers respond to the scene given § 87(2)(b)'s uncooperative behavior. It is undisputed that § 87(2)(b) used offensive language towards PO Glover during the course of the vehicle stop. It is not in dispute that § 87(2)(b) exited his vehicle to protest the two summonses he was issued. After § 87(2)(b) continued to use offensive language towards PO Glover, PO Glover decided to arrest § 87(2)(b). It is further undisputed that PO Glover approached § 87(2)(b)'s vehicle, with § 87(2)(b) seated inside, to affect the arrest. What remains in dispute is if PO Glover threatened § 87(2)(b) with the use of force.

§ 87(2)(b)'s testimony (Board Review 2) was as follows. § 87(2)(b) was seated inside his vehicle with it in drive. PO Napolitano grabbed § 87(2)(b)'s shirt. § 87(2)(b) placed his vehicle in park and removed the key from the ignition. PO Glover removed his can of pepper spray and held it in § 87(2)(b)'s face and asked, "Do you want to ride the lightning?"

PO Glover's testimony (Board Review 3) was as follows. PO Glover requested § 87(2)(b) to exit his vehicle, as he planned to affect the arrest. § 87(2)(b) responded, "I am not going anywhere with you nigger." PO Glover denied asking, "Do you want to ride the lightning?"

PO Napolitano's, PO Ryan Eskridge's, PO Jordan Bistany's, and PO Gary Minutolo's testimonies (Board Review 4, 5, 6, 7) were consistent and as follows. § 87(2)(b) was screaming and using slurs towards PO Glover. None of the officers heard PO Glover ask § 87(2)(b) "Do you want to ride the lightning?"

Despite PO Glover holding a can of pepper spray at the time, the alleged verbal threat of force is assumed to reference the use of a Taser.

§ 87(2)(b), § 87(2)(g). However, PO Glover denied the allegation and no officer testified to hearing PO Glover ask § 87(2)(b) if he wanted to "ride the lightning."

§ 87(2)(b), § 87(2)(g).  
§ 87(2)(b), § 87(2)(g).  
§ 87(2)(b), § 87(2)(g).

**Allegation B- Force: Police Officer Bobby Glover used pepper spray against § 87(2)(b)**

§ 87(2)(g).

It is undisputed that after § 87(2)(b) continued to use offensive language towards PO Glover, PO Glover decided to arrest § 87(2)(b). It is undisputed that PO Glover approached § 87(2)(b)'s vehicle and instructed § 87(2)(b) to exit his vehicle. § 87(2)(b) who was seated inside the vehicle, refused to comply with PO Glover's instructions. It is undisputed that PO Glover discharged pepper spray at § 87(2)(b). § 87(2)(b), § 87(2)(g).

§ 87(2)(b)'s testimony (Board Review 2) was as follows. After exiting his vehicle to inquire the reason for the second summons, the officers instructed § 87(2)(b) to return inside his vehicle. § 87(2)(b) called PO Glover a "jigaboo" before he returned inside his vehicle. § 87(2)(b) was seated inside his vehicle and had placed his vehicle in drive when PO Napolitano grabbed his shirt. § 87(2)(b) placed his vehicle in park and removed the key from the ignition. PO Glover removed his can of pepper spray and brandished it and asked, "Do you want to ride the lightning?" PO Glover instructed § 87(2)(b) to come with him. § 87(2)(b) replied, "I am not going anywhere with you fucking nigger." At that time, PO Glover discharged the spray towards § 87(2)(b)'s vision was immediately impaired.

PO Glover's testimony (Board Review 3) was as follows. After making the decision to arrest § 87(2)(b) PO Glover requested § 87(2)(b) to "come here." § 87(2)(b) ran back to his vehicle and returned inside. PO Glover approached § 87(2)(b)'s vehicle and opened the driver's door. PO Glover instructed § 87(2)(b) to, "Sir, please get out of your vehicle." § 87(2)(b) replied, "I am not going anywhere with you nigger." PO Glover attempted to reach for § 87(2)(b)'s arm, but § 87(2)(b) pulled it away. § 87(2)(b) stated, "Don't touch me nigger." PO Glover replied, "Sir, I am going to ask you one last time to step out of the vehicle." § 87(2)(b) responded, "I am

not going anywhere with you nigger.” PO Glover removed his pepper spray can, shook it, and discharged it one time towards § 87(2)(b). Prior to discharging the spray, § 87(2)(b) was seated in the driver’s seat and was not doing anything with his body other than yelling and refusing to exit his vehicle. PO Glover decided to discharge pepper spray at § 87(2)(b) because he refused to obey his lawful order to step out of the vehicle.

PO Napolitano’s, PO Eskridge’s, PO Bistany’s, and PO Minutolo’s testimonies (Board Review 4-7) indicated that § 87(2)(b) did not do anything inside his vehicle other than yell racial slurs, grip the steering wheel, and lean towards the passenger seat.

In the Threat, Resistance, and Injury (T.R.I) Report (Board Review 9) completed by PO Glover, in the “Actions Taken by MOS” section, PO Glover checked the OC Spray box. In the same section, in the “Reason for Force” subsection, PO Glover checked Defense of Self, Defense of other MOS, and Overcome Resistance or Aggression boxes.

Video footage from the dashboard camera captures the incident. Attached below is a Snag-It clip of the dashboard camera video. The clip shows § 87(2)(b) exiting his vehicle with summonses in hand and then reentering his vehicle and shutting the door. Approximately 23 seconds pass (the time-stamp embedded in the video indicates 23:33:54 to 23:34:17) from the time that § 87(2)(b) closes his door until he is removed from his vehicle. It is undisputed that § 87(2)(b) was pepper sprayed before exiting his vehicle.



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An officer’s use of force must be reasonable under the circumstances. Patrol Guide Procedure, 221-01 (Board Review 10). The reasonableness of the use of force by a police officer is determined by the following factors:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was initially stopped by PO Glover for speeding.

It is undisputed that through the course of the interaction § 87(2)(b) was uncooperative and used offensive language towards PO Glover. § 87(2)(b) only yelled, allegedly walked away from PO Glover and entered his vehicle, and refused to exit his vehicle by gripping the steering wheel and leaning his body away from the officers.

The dashboard camera video revealed that 23 seconds passed between the time § 87(2)(b) returned inside his vehicle and when § 87(2)(b) was removed from his vehicle after being pepper sprayed. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) was seated in the driver's seat with both hands on the steering wheel, his vehicle was turned off and the key was removed from the ignition. § 87(2)(g)

§ 87(2)(b) only resisted PO Glover's instructions to exit the vehicle by stating that he did not intend to follow PO Glover's instructions, physically refusing to exit, yelling slurs, holding on to the steering wheel, and leaning towards the passenger seat. While seated inside his vehicle, § 87(2)(b) did not initiate any physical contact with the officers.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) is a § 87(2)(b) old male, approximately 6'0" tall and weighs 300 pounds. § 87(2)(b) outweighed the largest officer at the scene by 70 pounds. Regardless of § 87(2)(b)'s size and stature, there were six police officers present during the incident.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g) In the dashboard camera video, no vehicles were noted as being obstructed or stopped by the incident.

§ 87(2)(b), § 87(2)(g)

Additionally, PO Glover and the responding officers had instructed § 87(2)(b) to return inside of his vehicle upon his exit. Although § 87(2)(b) continued to use offensive language towards PO Glover while disputing the summonses, he ultimately returned inside his vehicle within 25 seconds. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation C- Force: Police Officer Joseph Napolitano used physical force against § 87(2)(b)**

§ 87(2)(g)

It is undisputed that PO Glover discharged pepper spray at § 87(2)(b) after he refused to exit his vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)'s testimony (Board Review 2) was as follows. After being pepper sprayed, § 87(2)(b)'s vision was immediately impaired. § 87(2)(b) was punched in the left eye by an officer he could not see.

PO Napolitano's testimony (Board Review 4) was as follows. After the pepper spray was discharged, PO Napolitano and PO Glover removed § 87(2)(b) from the vehicle. PO Napolitano held onto § 87(2)(b)'s left arm while removing him from the vehicle. § 87(2)(b) landed face first on the ground. PO Napolitano admitted punching § 87(2)(b) on the shoulder with a closed fist when the officers were attempting to handcuff § 87(2)(b). § 87(2)(b) refused to place his left arm behind his back. PO Napolitano did not recall the exact number of times he struck § 87(2)(b) but denied punching § 87(2)(b) while he was seated inside his vehicle.

PO Glover's testimony (Board Review 3) was as follows. PO Glover denied seeing any officer punch § 87(2)(b) in the eye and did not recall which officer assisted him in removing § 87(2)(b) from the vehicle.

PO Eskridge and PO Minutolo (Board Review 5 and 7) both denied seeing any officer strike § 87(2)(b) with a closed fist while he was still seated in the driver's seat.

PO Bistany's testimony (Board Review 6) was as follows. PO Bistany recalled seeing a closed fist being thrown at § 87(2)(b) while he was seated inside his vehicle. PO Bistany did not recall if it was before or after PO Glover discharged the spray. PO Bistany believed it was PO Napolitano who struck the motorist with a closed fist, but did not see what part of § 87(2)(b)'s body PO Napolitano's punch made contact with. PO Glover and PO Napolitano removed § 87(2)(b) from the vehicle.

In the Threat, Resistance, and Injury Report (Board Review 11) completed by PO Napolitano following the incident, in the “Actions Taken by MOS” section, PO Napolitano checked the Hand Strike and Forcible Take Down boxes. In the same section, in the “Reason for Force” subsection, PO Napolitano checked Defense of Self, Defense of other MOS, and Overcome Resistance or Aggression boxes. PO Napolitano checked off the “Minor Contusion” and “Minor Lacerations/Abrasions” boxes in the “Civilian/Subject Injury” section. PO Napolitano did not suspect § 87(2)(b) to be under the influence of a stimulant and/or narcotic, as he checked “No” on his T.R.I. in the related category. A photograph of § 87(2)(b) was taken later in the evening at the 111th Precinct Stationhouse and was included with the T.R.I.s generated for the incident. In the photograph, a contusion is seen encompassing § 87(2)(b) s left eye (Board Review 12).

In his arrest photograph, a contusion and swelling can be seen around § 87(2)(b) s left eye (Board Review 13).

In § 87(2)(b) s Medical Records (Board Review 20), specifically the “History of Present Illness” section, a head injury was noted to the left side of § 87(2)(b) s head. The “ED Provider Notes” indicated § 87(2)(b) s left head injury was “positive for facial swelling.” The “Physical Exam” section noted an abrasion to § 87(2)(b) s left eyebrow.

The alleged punch to the left eye is not visible in the dashboard camera video given § 87(2)(b) was seated inside his vehicle at the time and PO Napolitano’s back is to the camera.

An officer’s use of force must be reasonable under the circumstances. Patrol Guide Procedure, 221-01 (Board Review 10). The reasonableness of the use of force is determined by the following factors:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D- Force: Police Officer Joseph Napolitano struck § 87(2)(b) with a flashlight.**

§ 87(2)(g)

It is undisputed that PO Glover and PO Napolitano removed § 87(2)(b) from his vehicle. It is in dispute whether while pulling § 87(2)(b) out of his vehicle, PO Napolitano struck § 87(2)(b) in the back of the head at least one time with his flashlight.

§ 87(2)(b)'s testimony (Board Review 2) was as follows. Multiple officers removed § 87(2)(b) from his vehicle. As § 87(2)(b) was brought to the ground, he was punched in the back of the head.

PO Napolitano's testimony (Board Review 4) was as follows. After the pepper spray was discharged, PO Napolitano and PO Glover removed § 87(2)(b) from the vehicle. PO Napolitano held onto § 87(2)(b)'s left arm while removing him from the vehicle. § 87(2)(b) landed face first on the ground. PO Napolitano denied striking § 87(2)(b) with a flashlight, but said he threw punches at § 87(2)(b). PO Napolitano stated his punches made contact with § 87(2)(b)'s shoulder, as § 87(2)(b) was resisting arrest and was refusing to place his arm behind his back.

PO Glover's testimony (Board Review 3) was as follows. PO Glover denied seeing an officer strike § 87(2)(b) with an object while § 87(2)(b) was brought to the ground.

PO Eskridge, PO Bistany, and PO Minutolo (Board Review 5-7) each denied seeing any officer strike § 87(2)(b) with a flashlight.

The Threat, Resistance, and Injury Report (Board Review 11) completed by PO Napolitano indicated that a hand strike was used, but not that § 87(2)(b) was struck with a flashlight. No injury to § 87(2)(b) is listed specifically about his head; solely minor contusion and minor lacerations/abrasions.

In § 87(2)(b)'s Medical Records (Board Review 20), a Computerized Topography (CT) scan of § 87(2)(b)'s head without contrast revealed no evidence of an acute traumatic intracranial injury. No injury to the back of § 87(2)(b)'s head was noted.

Video footage from the dashboard camera captures the incident. Attached below is a Snag-It clip of the video which captures § 87(2)(b) being removed from his vehicle and PO Napolitano



immediately swinging his flash flight two times at § 87(2)(b) The Snag-It video replays the allegation two times, once at regular speed and then again at half-speed.



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After reviewing the video footage in their interviews, all the officers (Board Review 3-8) acknowledged the two downward motions made by PO Napolitano in the video and PO Napolitano identified himself as the officer making the two downward motions. Reviewing the video did not refresh any officer's memory regarding the incident or seeing PO Napolitano swing his flashlight twice and strike § 87(2)(b) with it. PO Napolitano stated the two downward motions were him striking § 87(2)(b) two times with a closed fist while holding the flashlight in the same hand. While PO Napolitano acknowledged he had had his flashlight in his hand, he denied striking § 87(2)(b) with the flashlight.

A strike to the head with an object is deemed deadly physical force. *NYPD Disciplinary Case No. 2013-10851*, page 7 (Board Review 22).

Patrol Guide Procedure 221-01 (Board Review 10), states the use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical harm or death.

§ 87(2)(b), § 87(2)(g)  
[Redacted text block]

§ 87(2)(g)  
[Redacted text block]

§ 87(2)(g)  
[Redacted text block]

**Allegation E- Police Officer Bobby Glover arrested** § 87(2)(b)

§ 87(2)(g)  
[Redacted text block]

It is undisputed that after § 87(2)(b) exited his vehicle to protest the Vehicle and Traffic Law summonses, he used offensive language towards PO Glover. It is undisputed that at that time, PO Glover decided to affect an arrest. § 87(2)(b), § 87(2)(g)  
[Redacted text block]

PO Glover's testimony (Board Review 3) was as follows. After § 87(2)(b) exited his vehicle to protest the summonses, PO Glover instructed § 87(2)(b) to return inside his vehicle as it was a "safety issue" and was against the law to walk along a public highway. PO Glover began to walk back to his vehicle when § 87(2)(b) yelled, "You are nothing but a fucking nigger." PO Glover replied, "Excuse me?" § 87(2)(b) responded, "You heard what I said. You are nothing but a nigger." PO Glover approached § 87(2)(b) and instructed § 87(2)(b) to "come here." § 87(2)(b) ran back to his vehicle and returned inside. At that time, PO Glover decided to arrest § 87(2)(b) for disorderly conduct.

PO Napolitano, PO Eskridge, PO Bistany, and PO Minutolo's testimonies (Board Review 4-7) were consistent and as follows. PO Glover never verbalized his intention to arrest § 87(2)(b) prior to approaching § 87(2)(b)'s vehicle. Earlier in the vehicle stop, PO Glover told PO Napolitano and PO Bistany that he was upset that § 87(2)(b) had used offensive language towards him. PO Bistany and PO Napolitano heard § 87(2)(b) use offensive language towards PO Glover while protesting the summonses before returning inside his vehicle.

Lt. Shum's testimony (Board Review 8) was as follows. PO Glover informed Lt. Shum, after § 87(2)(b) had been handcuffed, that he arrested § 87(2)(b) for disorderly conduct and resisting arrest for not being compliant and using racial slurs.

It is undisputed that the location of the vehicle stop was on the right shoulder of the expressway. The stop occurred late in the evening and the dashboard camera video showed the expressway was not experiencing a large volume of traffic. Despite the location of the stop being on a public expressway, § 87(2)(b)'s use of offensive language did not draw a crowd of spectators. Approximately 25 seconds passed from when § 87(2)(b) exited his vehicle to protest the summonses to when he returned inside his vehicle. Approximately three vehicles passed in the outer lanes while § 87(2)(b) was outside of his vehicle. The video indicated that no individuals heard § 87(2)(b)'s language other than the officers at the scene.

§ 87(2)(b) was arrested for disorderly conduct: obscene language/gestures (PL 240.20 (3)) and resisting arrest (PL 205.30).

New York Penal Law 240.20 (3) states a person is guilty of disorderly conduct when, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof in a public place, he uses abusive or obscene language, or makes obscene gesture (Board Review 14).

A valid disorderly conduct arrest requires a public harm element that goes beyond a private dispute between the arrestee and police officers. People v. Baker, 20 N.Y. 3d 354 (2013) (Board Review 21).

New York Penal Law 205.30 states a person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person. (Board Review 15). The underlying arrest must be authorized in order for a person to be guilty of resisting arrest.

§ 87(2)(b), § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation due to § 87(2)(b)'s arrest.
- § 87(2)(b) has no criminal convictions in New York City. (Board Review 16)
- An October 10, 2017 inquiry into the Office of the New York City Comptroller revealed no notice of claim filed by § 87(2)(b).

### **Civilian and Officer CCRB Histories**

- This is § 87(2)(b)'s first complaint with the CCRB. (Board Review 17)
- PO Glover has been a member of the NYPD for 13 years. PO Glover is the subject of three prior complaints, involving 10 allegations. Of the 10 prior allegations, six are of force. None of the allegations have been substantiated. (Board Review 18)
- PO Napolitano has been a member of the NYPD for five years. PO Napolitano has one prior complaint, involving one force allegation. The allegation was not substantiated. (Board Review 19)

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Squad: 5

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date